



July 6, 2000

Mr. Thomas F. Keever
Assistant District Attorney
County of Denton
P.O. Box 2850
Denton, Texas 76202

OR2000-2537

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137017.

The Honorable Kirk Wilson, County Judge of Denton County, received a request for permission to inspect information received or generated by his office on April 18, 2000, relating to a list of twenty-one categories of information. On behalf of Judge Wilson, you claim that the request is over-broad and does not sufficiently specify the documents and/or information sought. You additionally argue that a portion of the information is excepted from disclosure under sections 552.101 and 552.131 of the Government Code.¹ We assume you have released the remaining information. You have submitted responsive information for a portion of the requested information and have marked these documents as Exhibits C and D. We have considered the exceptions you claim and have reviewed the submitted information.

First, we consider your argument that the request is overly broad. You state that the requestor has "submitted daily public information requests for the same information on all business days." You further express that you recognize that previous decisions of this office involving "previous identical" requests are controlling on this issue. You acknowledge that Open Records Letter No. 2000-0254 (2000) is controlling as to the questions you raise. Open

¹In your letter of May 3, 2000, you also asserted that a portion of the information is excepted from public disclosure by Government Code sections 552.102, 552.103, 552.104, 552.105, 552.107, 552.108, 552.109, 552.111, 552.113, 552.127, and 552.128. Because you have not explained or otherwise demonstrated how any of these other exceptions apply to the information at issue, we view those exceptions as being waived. See Gov't Code §§ 552.301(e)(1)(A), 552.302.

Records Letter No. 2000-0254 concluded that the request, while encompassing numerous facets of county business, is sufficiently clear and understandable to inform the county judge of the records being requested. Therefore, the request is proper.

You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. However, you have not specifically identified, nor are we aware of, a constitutional provision, statute, or judicial decision which makes the information confidential by law. Accordingly, Exhibits C and D may not be withheld from disclosure under section 552.101.

You also claim that portions of the submitted information are excepted from disclosure under section 552.131 of the Government Code. Section 552.131, added by Senate Bill 1851, provides the following:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from the requirements of Section 552.021.

(c) After an agreement is made with the business prospect, this section does not except from the requirements of Section 552.021 information about a financial or other incentive being offered to the business prospect:

(1) by the governmental body; or

(2) by another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a governmental body or a reduction in revenue received by a governmental body from any source.

Gov't Code § 552.131.² You explain that the documents in Exhibit C are communications between a Denton County economic development coordinator and the representative of an economic prospect "relating to the site within the County that the prospect was considering." You contend that the disclosure of the submitted information "would have disclosed information about the prospect and its negotiations with both local governments." You identify Exhibit D as a status report from the economic development coordinator to the Denton County Economic Development Commission. You argue that portions of the report concern negotiations with two business prospects. Having reviewed the submitted information and your arguments, we conclude that you have not established that the information relates to a trade secret or commercial or financial information of a business prospect. Gov't Code § 552.131(a). Further, you have not established that the submitted information contains information about a financial or other incentive being offered to a business prospect by the county or by another person. *See* Gov't Code § 552.131(b). Therefore, we conclude that you may not withhold from disclosure the submitted information under section 552.131. Accordingly, you must release the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

²*See* Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 9, 1999 Tex. Gen. Laws 4500, 4503.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Carla Gay Dickson".

Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 137017

Encl. Submitted documents

cc: Mr. Charles Siderius
Staff Writer
Denton Record-Chronicle
P.O. Box 369
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(w/o enclosures)